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 CHEVRON CORPORATION

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

10 CV 1146 IEG

WMC

In re Application of

CHEVRON CORPORATION, a Delaware
 corporation,

Applicant,

E-TECH INTERNATIONAL, a New Mexico
 organization, and WILLIAM POWERS, an
 individual,

Respondents.

CASE NO. _____

**APPLICATION OF CHEVRON
 CORPORATION FOR AN ORDER UNDER
 28 U.S.C. § 1782 PERMITTING CHEVRON
 CORPORATION TO ISSUE A SUBPOENA
 FOR THE TAKING OF A DEPOSITION
 AND THE PRODUCTION OF
 DOCUMENTS FROM E-TECH
 INTERNATIONAL AND WILLIAM
 POWERS**

*[Civil Cover Page; Memorandum of Points and
 Authorities; Declarations of A. Neuman, J. Sabovich
 and M. Younger; Request for Judicial Notice; Notice
 of Related Actions; Certificate of Interested Parties
 and Corporate Disclosure; and [Proposed] Order
 Filed Concurrently Herewith]*

ORIGINAL

1 Based upon the annexed declarations of James M. Sabovich, Michael L. Younger and Andrea E.
2 Neuman ("Neuman Decl.") and the accompanying memorandum of points and authorities, Chevron
3 Corporation ("Chevron") hereby applies to this Court for an Order, pursuant to 28 U.S.C. § 1782, and
4 Rules 26, 30 and 45 of the Federal Rules of Civil Procedure, granting Chevron leave to serve William
5 Powers and E-Tech International (collectively "E-Tech" or "Respondents") with the subpoenas annexed
6 to the Neuman Declaration as Exhibits A and B, respectively. Chevron further requests an Order to
7 Show Cause why the subpoenas should not issue, due to significant time exigencies here. As was held
8 days ago in denying a stay of another of Chevron's 1782 applications pending Plaintiffs' and
9 Respondents' appeal of the decision granting it, "[t]he Lago Agrio Plaintiffs are pushing the Ecuadorian
10 court to close the evidentiary phase of that litigation and immediately enter a multibillion dollar
11 judgment against Chevron, thus preventing Chevron from placing before that court the likely relevant
12 evidence contained in the [discovery sought]. Those plaintiffs intend, if they succeed, to attempt to
13 enforce such a judgment around the world." RJN, Exh. 6, 81. Accordingly, Chevron requests an Order
14 to Show Cause be issued so an expeditious briefing schedule can be established to resolve any
15 objections.

16 The requirements of Section 1782 are met by Chevron's Application. First, all Respondents
17 reside or may be found in the Southern District of California. Second, the discovery sought is for use in
18 proceedings currently pending before two foreign tribunals: *Maria Aguinda y Otros v. Chevron*
19 *Corporation* pending in the Superior Court of Nueva Loja, Ecuador (the "Lago Agrio Litigation"), and
20 *Chevron Corporation and Texaco Petroleum Company vs. The Republic Of Ecuador*, pending in the
21 Permanent Court of Arbitration in the Hague (the "Treaty Arbitration"). Third, as a litigant in those
22 proceedings, Chevron is an "interested person" within the meaning of Section 1782. The discretionary
23 factors set out by the United States Supreme Court in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542
24 U.S. 241, 249 weigh in favor of granting the Application. Those factors are: (1) whether the person
25 from whom discovery is sought is a participant in the foreign proceeding; (2) the receptivity of the
26 foreign tribunal to federal-court assistance; (3) whether the request conceals an attempt to circumvent
27 foreign proof-gathering restrictions; and (4) whether the request is unduly intrusive or burdensome.
28 None of the Respondents is a "participant" in either the Lago Agrio Litigation or the Treaty Arbitration

1 within the meaning of Section 1782. Both Treaty tribunals and Ecuadorian Courts have been
 2 historically receptive to Section 1782 assistance from federal courts. *See In the Matter of Compania*
 3 *Chilena de Navegacion Interoceanica S.A.*, No. 03 CV 5382 (ERK), 2004 U.S. Dist. LEXIS 6408
 4 (E.D.N.Y. Jan. 29, 2004); *In re Application of Noboa*, Nos. M18-302, M19-111, 1995 U.S. Dist. LEXIS
 5 14402 (S.D.N.Y. Oct. 3, 1995); *In re Oxus Gold PLC*, No. MISC 06-82-GEB, 2007 U.S. Dist. LEXIS
 6 24061 (D.N.J. Apr. 2, 2007); *Ukrnafta v. Carpatsky Petroleum Corp.*, No. 3:09 MC 265 (JBA), 2009
 7 U.S. Dist. LEXIS 109492 (D. Conn. Aug. 27, 2009); *Norfolk S. Corp. v. Gen. Sec. Ins. Co.*, 626 F. Supp.
 8 2d 882 (N.D. Ill. 2009).

9 The Application does not conceal an attempt to circumvent foreign proof-gathering restrictions
 10 in either of the foreign proceedings. A petitioner under Section 1782 need not show evidence to be
 11 discoverable or admissible in the foreign jurisdiction. *Intel Corp.*, 542 U.S. at 261. Rather, in
 12 determining whether a petition is merely an effort to circumvent foreign proof-gathering restrictions, the
 13 consideration for a district court is whether the discovery is being sought in bad faith. *Minatec Fin.*
 14 *S.A.R.L. v. SI Group Inc.*, No. 1:08-CV-269 (LEK/RFT), 2008 U.S. Dist. LEXIS 63802, at *26
 15 (N.D.N.Y. Aug. 18, 2008). Based on the evidence submitted, Chevron's request for discovery is a good
 16 faith effort to obtain probative evidence. Finally, the discovery requests are not unduly intrusive or
 17 burdensome. The discovery requested goes to central issues in both foreign proceedings and would be
 18 permitted under the Federal Rules of Civil Procedure.

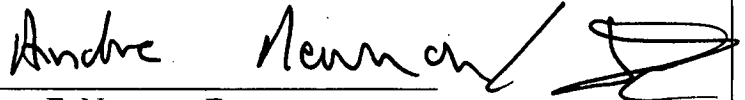
19 Chevron has filed 1782 petitions in five other jurisdictions, seeking, among other things,
 20 discovery from Plaintiffs' environmental consultants and others regarding this collusion between
 21 Cabrera and the Plaintiffs. These petitions have been granted in Georgia, Colorado, New York, and
 22 Texas while one is currently pending in New Jersey. RJN, Exhs. 1-4. No such Application by Chevron
 23 has been denied. Plaintiffs began opposing these Applications after the proceeding in Georgia resulted
 24 in testimony from one of their former experts, Dr. Calmbacher, revealing that Plaintiffs had submitted
 25 two reports under his name in the Lago Agrio Litigation, assessing millions in remediation costs that Dr.
 26 Calmbacher did not author: "I did not reach these conclusions and I did not write this report."
 27 Declaration of James M. Sabovich ("Sabovich Decl."), Exh. A, 6-8. Three courts have addressed
 28 Plaintiffs' various objections to discovery and all have rejected them. RJN, Exhs. 2-4.

1 Chevron anticipates that Plaintiffs will nonetheless oppose this discovery. Accordingly, it
2 respectfully requests that this Court issue an Order to Show cause establishing a rapid briefing schedule
3 to dispense with Plaintiffs' objections. Chevron proposes that Plaintiffs be granted one week from the
4 date of the issuance of the Order to Show Cause to oppose, that Chevron receive three days for its reply,
5 and that, if the Court wishing a hearing, that it be held within two days of Chevron's reply. Chevron
6 thereafter respectfully requests that this Court enter an Order, pursuant to Rules 26, 30 and 45 of the
7 Federal Rules of Civil Procedure and 28 U.S.C. § 1782, granting it leave to serve E-Tech and William
8 Powers with the subpoenas annexed to the Declaration of Andrea E. Neuman as Exhibits A and B.

9
10 DATED: May 27, 2010

Respectfully submitted,

11 GIBSON, DUNN & CRUTCHER LLP

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13 

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22 CHEVRON CORPORATION
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Court Name: USDC California Southern
Division: 3
Receipt Number: CAS013985
Cashier ID: bhartman
Transaction Date: 05/27/2010
Payer Name: NATIONWIDE LEGAL

CIVIL FILING FEE
For: CHEVRON V E-TECH INTL
Case/Party: D-CAS-3-10-CV-001146-001
Amount: \$350.00

CHECK
Check/Money Order Num: 123955
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

CHEVRON CORPORATION (APPLICANT)

DEFENDANTS

E-TECH INTERNATIONAL and WILLIAM POWERS
(RESPONDENTS) 2010 MAY 27 AM 11:54(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed _____

(c) Attorney's (Firm Name, Address, and Telephone Number)

Andrea E. Neuman
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3161 Michelson Drive, Suite 1200
Irvine, CA 92612-4412
949-451-3800

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) _____

DEPUTY

'10 CV 1146 IEG

WMC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 11 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 12 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury — Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 13 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 14 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 630 Liquor Laws		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 15 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	PERSONAL PROPERTY	<input type="checkbox"/> 640 R.R. & Truck	PROPERTY RIGHTS	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 16 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 17 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 18 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability			<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 195 Contract Product Liability			LABOR	SOCIAL SECURITY	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		FEDERAL TAX SUITS	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) _____ ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Section 1782

Brief description of cause:

Miscellaneous Action: Application to Issue Subpoenas Pursuant 28 U.S.C. Section 1782

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE SEE NOTICE OF RELATED ACTIONS FILED HERewith

DOCKET NUMBER _____

DATE

May 26, 2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIVED

AMOUNT

\$330- 5127/10 BA

APPLYING IFP

JUDGE

MAG. JUDGE